

REMARKS

This amendment responds to the office action dated January 12, 2009.

The Examiner rejected claims 1-23 under 35 U.S.C. § 101 as being directed to non-statutory subject matter in view of the recent Federal Circuit decision, *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008), which re-interpreted Supreme Court precedent regarding the analysis of method claims under that statute. Specifically, the Federal Circuit indicated for a method claim to comprise statutory subject matter, the recited steps had to transform some underlying subject matter to a different state or thing, or otherwise be sufficiently tied to another statutory category, such as an apparatus. Significantly, the decision noted by the Examiner indicated that claims directed to modifications or enhancements of images (modifying an X-ray image) were within the scope of subject matter set forth in § 101.

Having said that, the applicant notes, after a review of the claims of the present application, that the Examiner's rejection is not unfounded because the claims, as previously presented, only recited steps to *identify* red eye regions of an image, rather than modifying the image. The applicant has therefore amended each of the independent claims to respectively recite a limitation that the identified red eye regions be removed from the image. This falls within the ambit of § 101 in two respects. First, it recites steps that transform the underlying subject matter, i.e. changing an image containing red-eye to an image having reduced red-eye. This is true regardless of whether the transformed image is digitally represented on a computer screen because the Federal Circuit has indicated that modification of images displayed or to be displayed is sufficiently statutory. Second, the recited step of removing red eye identified by the claimed steps can only be performed by a computer, hence it is sufficiently tied to an apparatus — i.e. it does not encompass mere mental steps or abstract ideas.

For the foregoing reasons, the applicant respectfully requests that the rejection of claims 1-23 under 35 U.S.C. § 101 be withdrawn.

The Examiner indicated that claim 21 would be allowable if rewritten into independent form. All the limitations of claim 21, including those of independent claim 20, are now recited in

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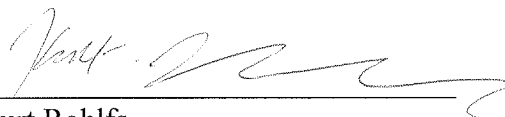
that independent claim. Claim 20 is therefore allowable, along with its dependent claim 22, and claim 21 has been canceled.

The Examiner rejected claims 12 and 14 under 35 U.S.C. § 102(b) as being anticipated by Benati et al., U.S. Patent No. 5,748,764. The Examiner rejected claims 1-5, 7-11, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Schildkkraut et al., U.S. Patent No. 6,252,976 in view of Koga et al., U.S. Patent No. 5,848,185. The Examiner rejected claims 13, 15, and 17 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Benati in view of Koga. The Examiner rejected claims 18 and 20 under 35 U.S.C. § 103(a) as being obvious over Benati in view of Liang et al., U.S. Patent No. 6,678,413. The Examiner rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Benati in view of Liang et al in view of Luo et al., U.S. Patent No. 7,035,461.

Each of independent claims 1, 7, 12, and 23 have been amended to recite the limitation of “applying a threshold mask to . . . provide a residual image that contains regions of said multi-channel image uniquely characterized by being potentially affected by a flash, but not uniquely characterized by being a potential facial region.” None of the cited references disclose or suggest this limitation. Therefore, the applicant respectfully requests that the Examiner’s respective rejections of claims 1-19 and 23 be withdrawn.

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 1-23.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kurt Rohlf", written over a horizontal line.

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